

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

WENDY L. OLIVER)
)
Plaintiff,)
) C.A. No. 09C-05-174 MMJ
v.)
)
BANCROFT CONSTRUCTION)
COMPANY, a Delaware corporation,)
BANCROFT DEVELOPMENT)
COMPANY, INC., a Delaware corporation,)
STUDIOJAED, LLC., a Delaware limited)
liability company, BUCK SIMPERS)
ARCHITECT + ASSOCIATES, INC., a)
Delaware corporation, DAVID W. TALLEY)
GENERAL CONTRACTOR LLC. A.K.A.)
D. W. TALLEY, LLC, a Delaware limited)
liability company,)

Defendants.

Submitted: September 30, 2011
Decided: October 21, 2011

On Defendant Studiojaed, LLC's Motion for Summary Judgment
GRANTED

On Defendant Buck Simperts Architect + Associates, Inc.'s
Motion for Summary Judgment
GRANTED

On Defendant Buck Simperts Architect + Associates, Inc's
Motion to Strike Plaintiff's Response in Opposition to
Buck Simperts Architect + Associates, Inc's
Motion for Summary Judgment
DENIED AS MOOT

MEMORANDUM OPINION

Paul A. Wernle, Jr., Esquire, New Castle, Delaware, Attorney for Plaintiff

Richard D. Abrams, Esquire, Timothy H. Rohs, Esquire, Mintzer Sarowitz Zeris
Ledva & Meyers LLP, Wilmington, Delaware, Attorneys for Defendant,
Studiojaed, LLC

David L. Baumberger, Esquire, Chrissinger & Baumberger, Wilmington,
Delaware, Attorney for Defendant Bancroft Construction Co.

Joseph Scott Shannon, Esquire, Artemio C. Aranilla, Esquire, Marshall Dennehey
Warner Coleman & Goggin, Attorneys for Defendant Buck Simperts Architect +
Associates

Brian E. Lutness, Esquire, Silverman McDonald & Friedman, Attorney for
defendant David W. Talley General Contractor LLC

JOHNSTON, J.

Plaintiff tripped over the side of a newly-constructed concrete ramp on July 17, 2007, and was injured. Plaintiff alleges that the ramp was negligently designed and constructed. The ramp was part of renovations to John Dickinson High School.

Plaintiff brought this action against entities involved in the project. Two defendants - Buck Simperts Architect + Associates, Inc. (“Simperts”) and Studiojaed, LLC (“Studiojaed”) - have moved for summary judgment. Both of these defendants provided architectural services as part of the renovations. The allegations against them sound in professional negligence.

By Order dated August 11, 2011, the Court denied in part plaintiff’s motion to extend discovery deadlines. The fact discovery cutoff was extended until August 31, 2011. However, the Court declined to permit any amendments to expert reports.

Summary Judgment Standard

Summary judgment is granted only if the moving party establishes that there are no genuine issues of material fact in dispute and judgment may be granted as a matter of law.¹ All facts are viewed in a light most favorable to the non-moving party.² Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if there is a need to clarify the application of law to

¹ Super. Ct. Civ. R. 56(c).

² *Hammond v. Colt Indus. Operating Corp.*, 565 A.2d 558, 560 (Del. Super. 1989).

the specific circumstances.³ When the facts permit a reasonable person to draw only one inference, the question becomes one for decision as a matter of law.⁴ If the non-moving party bears the burden of proof at trial, yet “fails to make a showing sufficient to establish the existence of an element essential to that party’s case,” then summary judgment may be granted against that party.⁵

ANALYSIS

“As a general rule, the standard of care applicable to a professional can only be established by way of expert testimony.”⁶ Claims of negligence against an architect must be supported by an expert opinion. The exception to this rule is when a layman would be as competent as an expert to judge whether or not a particular design created an unreasonable risk.⁷

Plaintiff and co-defendants opposed the motions for summary judgment. They argued that numerous provisions in the relevant contracts demonstrate that the architectural firms assumed oversight duties for the project. Additionally, it was the responsibility of the architects to respond to the construction manager’s design questions, to inspect the renovations, and to ensure that each phase of the

³ Super. Ct. Civ. R. 56(c).

⁴ *Wooten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).

⁵ *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

⁶ *Seiler v. Levitz Furniture Co.*, 367 A.2d 999, 1008 (Del. 1976).

⁷ *Id.*

construction process had been completed correctly as designed. Thus, they contend, if the ramp was not installed as originally designed, or if the ramp was negligently designed, the architects are liable for plaintiff's injuries.

Plaintiff's Expert Report

Plaintiff produced the report of an expert, who concluded:

Within the bounds of reasonable technical and professional certainty, and subject to change if additional information becomes available, it is my preliminary opinion that:

1. The unguarded ramp edge was unnecessary and created a tripping hazard for those pedestrians walking from the curb in that area to the main entrance.
2. The failure to install a handrail and or barrier as shown on Drawing C 2.4 violated the provisions of the International Construction Code and created a hazardous condition that caused Ms. Oliver to trip and fall.
3. The failure to install a handrail or barrier as shown on Drawing C 2.4 did not comply with reasonable standards for safe ramps and created dangerous condition that caused Ms. Oliver to trip and fall.
4. At the time of Ms. Oliver's fall no guards or warnings were provided at the ramp edge. The failure to provide any guards or warnings at the hazardous condition impaired Ms. Oliver's ability to avoid the ramp, did not comply with reasonable standards for safe facilities and was dangerous in a manner caused Ms. Oliver to trip and fall.
5. Ms. Oliver's description of tripping is consistent with unexpectedly encountering the unguarded ramp edge.

Defendant Simperts' Expert Report

The mechanical engineer expert opined:

Based on the review of written materials and the inspection of John Dickinson High School located at 1801 Milltown Road in Wilmington, Delaware, CED is able to conclude the following, to a reasonable degree of engineering probability:

1. Buck Simperts Architect was not involved with the exterior renovations to the school and was not responsible for the ramp configuration.
2. The ramp that was added to the exterior of the school did not conform to approved architectural/engineering drawings.
3. As it related to the reported area of Ms. Oliver's incident, responsible parties had an insufficient amount of time to discern any possible deviations from approved drawings.
4. The cause of this incident was the responsibility of Ms. Oliver.

Expert Testimony Required to Support Breach of Architectural Standard of Care

Neither plaintiff's nor Simperts' expert opined that either Studiojaed or Simperts breached the applicable standard of care. The Court finds that expert testimony is necessary to assist the finder of fact in interpreting the relevant contract provisions. Certain terms are beyond the comprehension of lay persons. For example, although the contracts may require the architect to inspect the

project, only an expert can provide guidance as to how often inspections are to be made, as well as the nature and extent of any inspection.

Even if plaintiff (or co-defendants) can demonstrate that the architects had, or should have had, notice of the allegedly defective condition of the ramp, expert testimony is necessary to establish the professional standard of care. A lay person is unqualified to determine whether and when the architect should have been on notice, and what steps the architect may have been required to take to rectify the situation.

Other issues in this case are whether the design was defective, or whether the construction was completed in accordance with the plans prepared by the architect. Again, these questions require standard-of-care expert testimony. It is beyond the ability of an unassisted lay person to ascertain who is responsible for interpretation of design plans and how any construction professional should interpret the architect's design.

In this case, no expert witness has opined that either Simperts or Studiojaed has breached any professional architectural standard of care, or that any alleged breach was the cause of injury to plaintiff.

CONCLUSION

At this juncture in the case, discovery is complete. Expert testimony is required to establish a *prima facie* case of architectural professional negligence. No expert opined that either defendant Studiojaed, Inc. or defendant Buck Simperts Architect + Associates, Inc. has breached an applicable standard of care, or caused plaintiff's injuries.

THEREFORE, Defendant Studiojaed, LLC's Motion for Summary Judgment is hereby **GRANTED**. Defendant Buck Simperts Architect + Associates, Inc.'s Motion for Summary Judgment is hereby **GRANTED**. All claims against both defendants are hereby **DISMISSED WITH PREJUDICE**.

FURTHER, Defendant Buck Simperts Architect + Associates, Inc's Motion to Strike Plaintiff's Response in Opposition to Buck Simperts Architect + Associates, Inc's Motion for Summary Judgment is hereby **DENIED AS MOOT**.

IT IS SO ORDERED.

/s/ *Mary M. Johnston* _____

The Honorable Mary M. Johnston